

ARIZONA DEPARTMENT OF REAL ESTATE
REAL ESTATE ADVISORY BOARD
MINUTES
September 8, 2010

The Arizona Real Estate Advisory Board met on Wednesday, September 8, 2010 at the Arizona Department of Real Estate (ADRE), 2910 N. 44th Street, First Floor Conference Room, in Phoenix, Arizona.

I. CALL TO ORDER

Chair Ann White called the meeting to order at 10:00 a.m.

Members present:

Ann White, Chair, Tucson
Carla Bowen, Member, Pinetop
Charles Bowles, Member, Tucson
Frank Dickens, Member, Scottsdale
Patti Shaw, Member, Phoenix

Absent:

Tom Pancrazi, Vice-Chair, Yuma
Bruce Mosby, Member, Phoenix
Jo Ann Sabbagh, Member, Tucson

ADRE representatives present:

Judy Lowe, Commissioner
Robin King, Investigations, Auditing & Development Services Manager
Mike Wheeler, Enforcement & Compliance Manager
Gretchen Conger, Legislative Liaison
Vicky Rokkos, Business Services Manager

Public:

Jim Amdahl

II. Minutes

Upon a motion by Ann White, seconded by (inaudible), the minutes of July 21, 2010 meeting were unanimously approved.

III. Facilitator Report from Advisory Board Members

Member Dickens reported that he had received a facilitation call from an individual who had his home listed and was having issues with his next door neighbor. This neighbor apparently had been robbed numerous times and had posted a sign indicating that "there are thieves and robbers in this neighborhood, don't ride your bike in the neighborhood, etc." Member Dickens reported that he stated to the caller that he would be happy to facilitate communications with the Department. He asked the caller to email and/or sent his request in writing; and, the request would be forwarded to the proper channels; however, he did state to the caller that typically this was a civil issue between two neighbors. Member Dickens suggested to the caller that he speak to his real estate agent who could speak to the neighbor. Apparently discussion did occur because when Member Dickens visited the neighborhood, there were now two four by eight signs posted. Discussion ensued among the Board as to what needed to be disclosed and the Department's jurisdiction. Commissioner Lowe stated that in this particular instance, it was outside the Department's jurisdiction.

Member Shaw reported that she had received neither calls nor no emails. Member Bowen reported that she had two calls. One call dealt with a "cooperative lease option agreement" where individuals were assuming the duties of a licensed agent and conducting unlicensed activity. These unlicensed individuals are showing homes and taking applications, etc.

Commissioner Lowe stated that there are two issues:

1. This is a management agreement for the unlicensed individuals to manage the leasing and to show the property;
2. It also appears to be individuals looking for properties to be able to show to potential buyer/tenants who want to lease with an "option to buy" and at some point the tenants exercise their options.

Commissioner Lowe stated that sometimes these individuals are unlicensed LLC; although, there are some that are licensed. Sometimes the lender who holds the mortgage to the property may not be aware that property is under a lease option. Instead the LLC tells the seller-"allow us to make the mortgage payment for you"-and at which time it comes together as a sale, they handle the transaction. Member Bowen stated that this is another example of unlicensed activity.

Member Bowen stated that she had another call regarding an MLS Board/ Association that wanted to put regulations on companies putting sign on properties that were REO properties. Member Bowen reported that she told the caller that they could not do that because that there is a master listing agreement that these REO companies have to sign that specifically states that they must put the sign on right away. She stated that this is not an Association issue. Commissioner Lowe stated new legislation mandates that no homeowners association can preclude anyone from putting a sign in their own yard.

Member Bowen had previously brought forward the issue of Freddie Mac maintaining that even if they owned six or more properties from the same subdivision that it was not necessary to get a Public Report. Commissioner Lowe reported she had interacted with Fannie Mae legal staff and initially they expressed resistance in having to obtain a Public Report; however, after continued dialoging, they asked if a "blanket" Public Report could be issued for all of their subdivisions. Commissioner Lowe reminded them of the Department's mandate of "protecting the public." Further, at the request of the Attorney General's Office (who is the Department's council); Fannie Mae staff was reminded about the "right of rescission" which exits for every buyer who does receive a Public Report or the exemption to the Public Report.

Commissioner reported that Fannie Mae staff will be advising their members and asset managers that a Public Report is required anytime that Freddie Mac owns, markets and sells six or more properties in a subdivision. This matter came to resolution approximately two weeks ago and Fannie Mae staff intends to advise their broker clients of the requirement. Discussion ensued among the Board regarding older subdivisions; issuing Public Reports or exemptions. The Board provided a variety of scenarios to which Commissioner Lowe acknowledged that there will be challenges.

IV. Enforcement and Compliance Division (Overview)

Mike Wheeler, Enforcement and Compliance Manager, provided an overview of the Enforcement and Compliance Division. He explained that the division enforces the law and ensures that the licensees are complying with those laws. The division gets cases from various sources such as the Investigations Division; Licensing and even Development Services. The Enforcement and Compliance division determines if there violations and are they sustainable; how they are going to be handled (Appealable Actions and Non-Appealable Actions). Manager Wheeler further explained the process; disciplinary actions and the role of the Attorney General's Office. He also reported on the Division's caseload and provided statistics.

V. Commissioner's Report

See attached reports which list statistics from FY 2007 to FY 2010 as well as Division Statistics Report-FY 2011. Also attached is the statistical report for "Licensed Individuals and Entities" for September 2010.

Business Manager Vicky Rokkos presented the Budget Report as of 8/31/2010 (see attached). Commissioner Lowe stated that she is looking forward in preparing the 2012 to 2013 budget. Discussion ensued on the possibilities of filling some vacant positions in the various divisions; while other positions will continue to remain vacant. One Division hit especially hard is Auditing and Investigations. Commissioner Lowe stated that the "train is coming down the track" regarding investment groups, short sales and REO's. Additionally the Department is asking for three more investigator/auditors and an IT tech person. Two years ago the Department has 74 positions; it now has 55 positions. Commissioner Lowe stated that the Department physically has 31 employees and three years ago, we had close to 70.

Legislative Report- Gretchen Conger explained that there are three levels of law: the Statutes, the Rules and Substantive Policy Statements. She stated that the Statutes supersede everything; Rules are made because the statute allow for certain rules to be made; Substantive Policy Statements which there is not supposed to be anything arguable as far as the law goes.

Ms. Conger provided an overview of the legislative and rule process. She explained the timeframes associated with rules and filings. Ms. Conger reported that the Department has requested an exemption to the rule moratorium from the Governor's Office. Discussion ensued regarding gathering industry support and partners who can move forward with Department ideas. Commissioner Lowe asked the Board for feedback referencing statute changes for the upcoming session. Some issues mentioned were continuing education; inconsistent policies on transfers, septic tanks and criteria for septic tanks and inconsistencies with state law. Chair White stated that some of these issues will need to be pursued through AAR or the Homebuilders. Commissioner Lowe suggested they come to the next meeting with legislative ideas and what they would like to see go forward.

VI. Proposed Slate of Officers for November Election

This matter was tabled. Commissioner Lowe suggested that Board members, whose term is scheduled to expire, contact the Governor's Office of Boards and Commissions if they wish to be reappointed.

VII. Other Matters

None noted.

VIII. Call to the Public

Jim Amdahl introduced himself as a member of the public. Mr. Amdahl stated that he is a licensee and has practiced real estate since 1980 and has been a designated Broker. Currently he is a managing broker with a franchise in Ocotillo. He commended the Board and the Commissioner for their dynamic work.

IX. Adjournment

Meeting adjourned by Chair White at 12:00 p.m.

DATED THIS 8th DAY OF SEPTEMBER 2010
ARIZONA REAL ESTATE ADVISORY BOARD

BY: _____
Ann White, Chair